

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH CHOTINER	:	CIVIL ACTION
	:	
v.	:	
	:	
PHILADELPHIA HOUSING AUTHORITY	:	
et al.	:	NO. 02-9504

MEMORANDUM

Dalzell, J.

August 19, 2004

Plaintiff Kenneth Chotiner is an attorney who worked in the legal department of defendant Philadelphia Housing Authority ("PHA") for four years until his abrupt termination in 2002. In this action, Chotiner asserts claims under 42 U.S.C. § 1983 and the Pennsylvania Whistleblower Law, 43 Pa. C.S. § 1421 et seq., against PHA, Carl R. Greene (PHA's Executive Director), James A. Jones (General Manager of Human Resources), Marc Woolley (former Acting General Counsel), and Helen Ferris (former Acting Associate General Counsel). He alleges that PHA fired him at the behest of the individual defendants in retaliation for his exercise of protected speech and for exposing the wrongdoings of Woolley.

Now before us is Chotiner's motion to reopen the depositions of Woolley and Ferris in order to question them about certain documents in their personnel files, their curiously-timed departures from PHA, and, above all, their ties to Ronald White, the attorney and alleged éminence grise of Philadelphia's City Hall who was recently charged with many counts of wire and mail fraud, extortion, and perjury in a long-anticipated federal

indictment. See Indictment, United States v. Ronald White et al., Crim. No. 04-370 (E.D. Pa.) (the "City Hall case").¹

Chotiner filed this motion on January 5, 2004. At that time, although the federal investigation was headline news in Philadelphia, it was still incomplete. Because it seemed inadvisable to consider Chotiner's request in a factual vacuum, we deferred resolution of the motion until the contours of the federal probe became clearer, and transferred this action to the Court's civil suspense docket. On June 29, 2004, the grand jury at last returned the indictment in the City Hall case, and it is therefore now time to return to Chotiner's motion.

With the benefit of the past six months of developments in the City Hall case, we agree with the defendants that Chotiner has not shown good cause for re-opening their depositions.

Factual Background

It is impossible to understand the basis of Chotiner's motion without reviewing the allegations in the second amended complaint and the information about defendants Woolley and Ferris that has come to light both through the discovery process and media reports concerning the federal investigation of Ronald White.

1. White, besides being named in a total of thirty-four counts, is also charged with conspiracy to commit honest services fraud in violation of 18 U.S.C. § 371. There are eleven other defendants in the City Hall case.

1. The Complaint

Chotiner joined PHA as assistant legal counsel in 1998. According to the second amended complaint, he consistently received excellent performance evaluations. In January of 2002, Chotiner's supervisor and mentor, Michael Pileggi, Esq., recommended his promotion to the position of senior legal counsel. In the Spring of 2002, however, PHA terminated Mr. Pileggi. Defendant Greene appointed Woolley as acting general counsel and made Ferris associate general counsel for litigation, despite the fact that she had no litigation experience.

Chotiner alleges that Woolley and Ferris were so unqualified for their positions that they "continually" asked him to explain routine litigation procedures and substantive law. Second Amended Compl. ¶¶ 17-18. Ferris complained to Woolley about Chotiner's tone, and they summoned him to a meeting in mid-April at which Woolley told him that "he was not going to put up with Chotiner's 's--t' and that "there was going to be another shake-up and, if [Chotiner] wanted to be around after it, he'd better learn to play ball." As Chotiner left Woolley's office, Ferris reportedly warned him that he "does not know who he's f--king with." Id. at ¶ 19.

The following month, Chotiner allegedly had several more run-ins with Wolley and Ferris. He told Ferris on several occasions that, in his opinion, Woolley had been promoted to cover up his prior "wrongdoing and errors of commission/omission regarding the failure to report employment cases to HUD" in his

former position at PHA. Id. at ¶ 20. Chotiner also told Ferris that, in view of the fact that Woolley had Delaware license plates on his car (and was presumably not paying the sky-high insurance rates inflicted on City residents), he was either violating PHA's residency requirements or was committing insurance fraud. Id. at ¶¶ 51-52. In another incident, Woolley convened a meeting with the attorneys in the litigation department to notify them that their workday began at 8:30 a.m. and that PHA would dock the salaries of latecomers. Chotiner asked whether lawyers who toiled past the official end of the workday would receive overtime pay, since Woolley apparently intended to treat the attorneys as hourly employees. Id. at ¶ 21-22.

Finally, Chotiner clashed with Woolley and Ferris over one of his cases. PHA and a PHA police officer were co-defendants in the case, and in May of 2002, Ferris decided that outside counsel should defend PHA and that the agency should not undertake the officer's defense, either in-house or through outside counsel. Ferris allegedly entered Chotiner's office, removed documents relating to the officer, and forwarded them to PHA's outside counsel.²

In a memorandum to Woolley, Chotiner argued that PHA had an ethical obligation to defend the officer and that he

2. According to the second amended complaint, Chotiner noticed that a letter from Mr. Pileggi to the officer concerning PHA's representation of him was missing from the file when outside counsel returned it.

required separate representation because the officer and PHA were asserting inconsistent defenses. Chotiner refused to withdraw from the case.

At a meeting on July 2nd, Woolley eventually acceded to separate, outside counsel for the officer. However, he demanded that Chotiner turn over a letter that Chotiner had written to the officer. Chotiner believed that the letter was protected by the attorney-client privilege and refused to give it up. Woolley threatened to fire him, and Chotiner requested an opportunity to speak with another lawyer concerning his ethical obligations to the officer. Woolley fired Chotiner on the spot and ordered him to leave the building. See generally id. at ¶¶ 23-38.

2. Discovery

During the contentious and protracted discovery in this case, Chotiner learned that Woolley and Ferris had checkered career histories at PHA that made their sudden promotions during the 2002 shake-up of the legal department somewhat puzzling. According to Chotiner, PHA found Woolley insubordinate in August of 2001 but then granted him a promotion the next day. For her part, Ferris had not been admitted to the bar of either this Court or the Court of Appeals for the Third Circuit at the time she became PHA's litigation head. The agency demoted her shortly after Chotiner's departure, and on September 12, 2002, she was reprimanded for two instances of unsatisfactory job performance. Def.'s Mem. at 4. Most intriguing of all, Chotiner learned that,

before Woolley's appointment as acting General Counsel, he had served as General Manager of Human Resources and was in a position to select lawyers who would receive case referrals from PHA. One of those lawyers was Ronald White.

On October 18, 2003, the media reported that federal authorities had subpoenaed PHA computers and documents as part of its City Hall fraud probe. See Dave Davies, Mark McDonald, & Earni Young, Feds Subpoena PHA Records, Computers, Philadelphia Daily News, Oct. 18, 2003, at 3. Woolley resigned from PHA effective December 1, 2003. PHA spokesman Kirk Dorn reported to the media that the resignation had nothing to do with the federal investigation and that Woolley merely decided "it was time to try something different." Philadelphia Housing Authority's Lawyer Resigns, Philadelphia Inquirer, Dec. 3, 2003, at B6. Ferris resigned from PHA on December 16, 2003.

Discussion

Chotiner argues that allowing him to question Woolley and Ferris on their ties to White will enable him "to connect the dots, both backwards and forwards" in his case. Pl.'s Mem. at 5. In particular, it will allow him to explore the theory that it was Woolley's and Ferris's ties to White -- and through him to the powers-that-be in City Hall -- that "emboldened" them to treat Chotiner so cavalierly after their puzzling promotions in 2002.

Immediately after Chotiner filed the motion, the

defendants responded that their possible ties to White had no relevance to the issues in this case. Moreover, they argued that given the possibility that they could be implicated in the federal probe, their re-depositions would be burdensome because they would have to retain counsel who are experienced in such matters or blindly proceed "in a manner that could potentially compromise [their] rights if [they] are later questioned in connection with the probe."³ Def.'s Resp. at 10.

Now that we have had an opportunity to review the federal indictment, it is apparent that both of these arguments have merit.

We begin with the problem of relevance. While it is certainly true that Chotiner is entitled to "connect the dots" in this case, he may not do so in a manner that strays into irrelevance or unfairly prejudices the defendants. The Government's case against White largely focuses on the efforts of White, former City Treasurer Corey Kemp, and others to profit from lucrative City bond deals. By contrast, Chotiner's claims against Woolley and Ferris focus on a series of conflicts that unfolded within the PHA legal department and do not even remotely

3. Woolley and Ferris also complain that the motion was untimely because Chotiner filed it after discovery in this case had already closed. However, we decline to resolve the motion on this basis. Chotiner had no control over when the federal probe burst into public view. Moreover, the defendants were so contentious during discovery that we long ago set aside any hope of keeping this case on some semblance of a normal schedule.

implicate White or overlap with the federal indictment.⁴ Indeed, the indictment in its only reference to the agency suggests that White did not regard his ties to PHA as particularly significant. According to the indictment, Kemp at one time considered applying for a position at PHA. As the following exchange reveals, White counseled his alleged protégé to stay in City government because the pickings at PHA were too slim:

[O]n or about February 27, 2003, KEMP asked WHITE, "I wanted to ask you a question, from a career standpoint, should I be looking at other opportunities that jump up, like for example, the CFO position jumped up, opened up at PHA" WHITE replied, "that's the worst place you could ever go, man. Nah, you need to stay where you are, because that's where all the action is, that's where all your best contacts are, but you know, look man, we moving together." KEMP said, "right, right, I didn't know if there was more opportunity to do things there than where we're at." WHITE responded, "nah, nah there's nothing you could do there"

Indictment at 8.

Chotiner's only basis for re-deposing Woolley and Ferris thus devolves to his theory that White's patronage "emboldened" them to treat him with a free hand. However, the relevant issues here are what Woolley and Ferris did to Chotiner and why they did it -- not the reasons why they felt "emboldened" in their actions. Moreover, even if the reasons why the defendants felt so confident were relevant here, any evidence on this issue would certainly be excludable under Fed. R. Evid. 403

4. While the incident that finally led to Chotiner's termination involved the defendants' referral of a case to outside counsel, that lawyer was not White.

because the unfair prejudice that would result from the linkage of these defendants to an indicted but untried defendant would greatly outweigh its marginal probative value.⁵ The re-deposition of these defendants, therefore, would not even be a fishing expedition, as the defendants contend; it would be akin to a canoe trip across the Dead Sea.

Finally, there is merit in the defendants' concern that their re-depositions could potentially compromise their rights in the event they are named in the federal criminal case. Even though the scope of the indictment, not to mention White's colorful reported comments about PHA, suggest that the federal investigation does not seriously implicate the agency, it remains well within the realm of possibility that the defendants are cooperating with the Government or that there will be a superseding indictment naming Woolley or Ferris.

For these reasons, we agree with the defendants that there is no basis for subjecting them to re-deposition. An appropriate Order follows.

5. If a trial is necessary in this case, it will likely occur before White's trial.

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ORDER

AND NOW, this 19th day of August, 2004, upon consideration of plaintiff's motion to reopen the depositions of defendants Woolley and Farris (docket no. 44), and defendants' response thereto, and for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

1. The motion is DENIED;
2. The Clerk of Court shall RESTORE this action to the Court's active docket;
3. The parties shall FILE any motions for summary judgment by October 15, 2004, with responses thereto by October 29, 2004; and
4. Further scheduling shall abide the outcome of summary judgment.

BY THE COURT:

Stewart Dalzell, J.

